IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8205 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHEHARAJI ZENAJI SINCE DECEAEDBY HIS HEIRS MAHOBATJI THAKOR - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR PJ VYAS for Petitioner(s) : 1,
MR AY KOGJE AGP for Respondent(s) : 1,
MR KR RAVAL for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 21/11/2006

ORAL JUDGMENT

1. Mr.P.J. Vyas, learned counsel for the petitioner, Mr.A.Y. Kogje, learned Assistant Government Pleader for the

respondent No.1 - State and Mr.K.R. Raval, learned counsel for the respondent No.2.

2. The petitioner, being aggrieved by the order dtd.21/8/1995 passed by the Deputy Secretary (Appeals) in Case No.SRD.CON.Gandhinagar.24/94, whereunder the order dtd.22/10/1994 passed by the Prant Officer, Gandhinagar in Case Tukada(Fregmentation) No.462 of 1993 has been confirmed, is before this Court.

3. The summary of the facts necessary for disposal of the present case are that vide a registered sale deed (for the reasons best known to the petitioner, has not been filed in this proceedings) dtd.3/5/1973, the petitioner purchased 0.24. Gunthas land from respondent No.2 out of 2 Acres and 21 Gunthas of Block No.69. Entry No.1971 was made and was later-on certified with a condition that the purchaser shall cultivate the land as a co-owner.

4. It appears that thereafter the Mamlatdar came to know about the matter and the entry and therefore, he prepared a case and submitted to the Prant Officer with a recommendation that the proceedings be initiated under sec.8 read with sec.32(B) of the Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (“the Fragmentation Act” for short). Thereafter, notice

was issued to the petitioner and he was asked to explain the cause. The petitioner submitted to the authority that the parties would cultivate the land jointly, there would be no fragmentation and in any case, as the petitioner holds the land of Survey Nos.70 and 78, which is contiguous to the purchased land, there would be no fragmentation.

5. The Prant Officer, however, rejected all the submissions and directed summary eviction of the petitioner. The matter was taken in revision before the Secretary (Appeals), who was pleased to dismiss the matter.

6. Mr.P.J. Vyas, learned counsel for the petitioner submitted that the action taken by the authorities was bad, firstly because, there was delay in taking an action. His submission is that the land was purchased in the year 1973, recommendations were made in the year 1983 and the order was passed on 22/10/1994. He submits that during these years, the petitioner has developed the land and as he continues to be in possession, equity lies in his favour. His further submission is that 0.24 Gunthas of land would not cause any fragmentation because the land would be included in the other land of the petitioner. His further submission is that if the entry says that the

parties would cultivate the land jointly, then there is no partition and there is no fragmentation.

7. On being asked that if permission to purchase a fragment or part of the land of a holder, is to be obtained from the Collector, then why such permission was not sought for and whether any post facto sanction can be obtained, Mr.Vyas, learned counsel for the petitioner made a candid statement that post facto sanction can always be obtained. When this court required the learned counsel for the petitioner to refer to the provisions of law, he said that there is no provision of law, but there are Government Circulars to that effect, when this court asked him to cite one of the Circulars, he said that he even does not have such Circular. Barring recording these factual aspects, I do not wish to record anything further.

8. So far as the question of co-ownership / joint ownership is concerned, learned counsel for the petitioner has relied upon a Single Bench Judgment of this Court delivered on 3/9/1975 in Special Civil Application No.662 of 1971. The facts of the said case were altogether different. In the said matter, the said petitioner before the High Court had purchased the right to cultivate jointly. The observations in the said judgment are “since the sale was effected on

the condition not to divide the Block, the Deputy Collector has granted sanction to the same.” From these observation, it would clearly appear that the permission was sought before transfer and there was no sale. In the present case, the petitioner has come out with a specific case that he has purchased the property, he is in exclusive possession and has developed that part of the land which is in his possession. If the petitioner is in exclusive possession of the property then the fact of joint ownership and joint possession would be absolutely ruled out.

9. Even otherwise, under the law, there are no provision that to avoid fragmentation, a joint right to cultivate can be granted in favour of anybody.

10. So far as the contiguous land of Block Nos.70 and 78 are concerned, that would not cut any ice in favour of the petitioner, law says that there should be no fragmentation of the land under sale. No new fragment should be created. After the petitioner purchased the land, if a fragment has come into being then such a fragment would be contrary to the provisions of law. If there was no sanction and post facto sanction cannot be granted, then the sale itself would be bad, if the sale

itself is bad and the action is void, contrary to law and per-se illegal, then the delay would not come in the matter. It is to be noted that the matter was reported to the revenue authorities, on which the Mamlatdar had prepared recommendations, referred the same to the authorities and thereafter, action was taken.

11. Mr.Vyas, learned counsel for the petitioner has also placed his strong reliance upon a Division Bench Judgment of this Court in case of Patel Ratilal Maganbhai and others Vs. State of Gujarat, reported in 2003(1) G.L.R. 562. In the said matter, certain proceedings under the Fragmentation Act were initiated by the competent authority, the same culminated in favour of the transferee and the order was ultimately approved by the Government. The transferor came to the High Court under Article 226 of the Constitution of India and then the High Court observed that the seller of such transaction of voluntary sale, has to file, within the period of limitation, a suit for declaration that the sale is void. The Court also observed that a plea of illegal / void transfer would be available to the petitioner, the plaintiff of said matter. The facts of the said case were altogether different and same do not say anything about the action taken by an

authority. In the present case, the authorities were absolutely justified in holding that the sale was contrary to the provisions of the Fragmentation Act. The petition is dismissed. Interim relief, if any, is vacated forthwith. No costs.

(R.S. GARG,J.)

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